

1 **Eduardo Hernandez**
2 J37244 DIO/21 PBSP/SHU
3 P.O. BOX 7500
4 Crescent City, CA 95532
5 IN PRO SE;

6 **UNITED STATES DISTRICT COURT FOR**
7 **THE NORTHERN DISTRICT OF CALIFORNIA**

8 **EDUARDO HERNÁNDEZ,**
9 **Plaintiff,**
10 **v.**

11 **J. BEARD; M. GATE;**
12 **R.E. BARNES; G.D. LEWIS;**
13 **C. DUCART; E.W. OLSON;**
14 **T. WOODS; F. VANDERHOOFVEN;**
15 **R. TUPY; T. CABRERA;**
16 **R. PRESLER; R. BUTCHER;**
17 **G. PIMENTEL; D. YANG;**
18 **J. CLEMONS; T. OSTEN;**
19 **S. NAKAMURRA; LENTZ;**
20 **M. CREED; M. MCLEAN; RIECH;**
21 **AND DOES 1-20; INCLUSIVE,**
22 **Defendants.**

23 **CV 13 5633** Case No.

24 **JURY TRIAL DEMAND**
25 **COMPLAINT FOR MONEY DAMAGES,**
26 **DECLARATORY AND INJUNCTION**
27 **(42 U.S.C. § 1983 CIVIL RIGHTS ACTION)**

28 **PSG**
(PR)

I. JURISDICTION

1. This action is brought pursuant to 42 u.s.c. sections 1983 and 1985 to redress the violations/deprivation(s), under color of state law, of rights secured by the Constitution of the United States. Jurisdiction is based upon 28 u.s.c. sections 1331 (1) and 1343. The Court has supplemental jurisdiction over plaintiff's state law tort claims pursuant to 28 u.s.c. section 1367.

2. Plaintiff seeks declaratory relief pursuant to 28 u.s.c. sections 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

3. Plaintiff seeks injunctive relief pursuant to 28 u.s.c. sections 2283, 2284 and Rule 65 of the Federal Rules of Civil Procedure.

COMPLAINT

II. VENUE

1 4. The Northern District of California is appropriate venue under
 2 28 U.S.C. § 1391(b)(2) because it is where these unlawful acts
 3 and/or omissions giving rise to the claims occurred
 4 in this district.

III. PARTIES

5
 6 5. Plaintiff Eduardo Hernández is and was at all times men-
 7 tioned herein, a prisoner of the State of California ser-
 8 ving a sentence of LIFE with the possibility of parole in the
 9 custody of the California Department of Corrections and
 10 Rehabilitations (CDCR).

11 6. Defendant Jeffery A. Beard, is the current secretary of CDCR.
 12 He is legally responsible for the over-all operation of
 13 the Department and each institution under its juris-
 14 diction, including PBSP*. He is being sued in his official
 15 capacity.

16 7. Defendant Mathew Cate, is the former Secretary of CDCR.
 17 He was and is legally responsible for the over-all operation
 18 of the Department and each institution under its juris-
 19 diction, including PBSP. He is being sued in his official
 20 capacity.

21
 22 8. Defendant Georgy D. Lewis, is a former warden
 23 at PBSP. During his tenure, he was and is legally
 24 responsible for the safety and well-being of prisoners,
 25 the over-all operation, and/or the supervision and
 26 discipline of all medical and correctional staff at
 27 PBSP. He is being sued in his individual and
 28 official capacity.

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1 9. Defendant Ron E. Barns, is the current warden at PBSP.
2 He is legally responsible for the safety and well-being
3 of prisoners, the over-all operation and/or the super-
4 vision and discipline of all medical and correctional st-
5 aff at PBSP. He is sued in his official capacity.

6 10. Defendant Clark Ducart, is the current chief Deputy
7 Warden (CDW) at PBSP. He is legally responsible for the
8 safety and well-being of prisoners, the over-all operation,
9 and/or the supervision and discipline of all medical and
10 correctional staff at PBSP. He is being sued in his
11 official capacity.

12 11. Defendant G.W. Olson, is a current Correctional Captain
13 (Capt.) at PBSP. In this complaint he was and is res-
14 ponsible for reviewing an administrative appeal of
15 staff misconduct. He is being sued in his individual
16 and official capacity.

17 12. Defendant Woods, is a former Capt. at PBSP. During
18 his tenure and these events he was and is legally resp-
19 onsible for the safety and well-being of prisoners, and/
20 or the supervision and disciplinary of all medical and
21 correctional staff in SHU "D" Facility at PBSP. He
22 is being sued in his individual and official capacity.

23 13. Defendant Vanderhoeven, is a current
24 correctional lieutenant (L.T.) at PBSP. He was and is
25 responsible of conducting the disciplinary hearing.
26 He is being sued in his individual and official
27 capacity.
28

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1 14. Defendant Tupy, is a current L.T. at PBSP. He was
 2 and is responsible for the safty and well-being of priso-
 3 ners and/or the supervision of subordinate medical
 4 and correctional staff during these events. He is sued
 5 in his individual and official capacity.

6 15. Defendant Cabrera, is a current correctional
 7 Sergeant (Sgt.) at PBSP. He was and is responsible
 8 for the safty and well-being of prisoners and/or the
 9 supervision and discipline of subordinate medical
 10 and correctional staff during these events. He is
 11 sued in his individual and official capacity.

12 16. Defendant Presler, is a current Sgt. at PBSP. He
 13 was and is responsible for the safty and well-being of
 14 prisoners housed in the Correctional Treatment Center
 15 (C.T.C) during his relevant mention herein. He is sued
 16 in his individual and official capacity.

17 17. Defendant Butcher, is a current Sgt. at PBSP. He
 18 was and is responsible for the safty and well-being of
 19 prisoners housed in the C.T.C during his relevant me-
 20 ntion herein. He is sued in his individual and official
 21 capacity.

22 18. Defendants Pimentel, Yang, Clemons,
 23 and Osten, are current Correctional Officers
 24 at PBSP. They are sued in ~~there~~ individual and offic-
 25 ial capacity.
 26

27 19. Defendant Reich, is a current correctional
 28 officer (C.O.) at PBSP. She is responsible for the con-

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1 fiscation of plaintiffs' legal papers. She is sued
2 in her individual and official capacity.

3 **20.** Defendants Nakamura and Lentz are
4 current Registered Nurses (R.N.) at PBSP. They were
5 and are responsible for the initial First Aid and/or
6 any Medical care in progress, during these events
7 and/or any Medical emergencies at PBSP. They are
8 sued in their individual and official capacity.

9 **21.** Defendant Creed is a current Liscensed Vocat-
10 ional Nurse (L.V.N) at PBSP. She was and is resp-
11 onsi ble as Medical First Responder to initiate
12 First Aid and Medical care during these
13 events and/or any medical emergencies at
14 PBSP. She is sued in her individual and official ca-
15 pacity.

16 **22.** Defendant Maureen McLean, is the current (FNP)
17 Chief Executive Officer (C.E.O) at PBSP. She was and
18 is legally responsible for the over-all operation and/
19 or supervision and discipline of all medical staff
20 at PBSP. She is sued in her individual and official
21 Capacity.

22 **23.** Each defendant mentioned in this complaint,
23 acted under the color of California law.

24 **24.** Defendants DOES 1-20, are each responsible in
25 some manner for the constitutional violations
26 and damages to Plaintiff alleged herein. The
27 true names and capacities of defendants
28

complaint

DOES 1-20 are presently unknown to plaintiff. Plaintiff is informed and believes, therefore alleges on information and belief, that each of them is responsible in some manner for the constitutional violations and damages to the plaintiff, alleged here in described. Plaintiff therefore sues DOES 1-20 by such fictitious names and will seek leave to amend this complaint to add their true names when the same have been ascertained.

IV. INTRA-DISTRICT ASSIGNMENT

25. The events giving rise to this lawsuit took place in Del Norte County and thus, this case should be assigned to the San Francisco Division of the Northern District of California pursuant to Rule 3-2 (d) of the local Rules of the Northern District of California.

V. INTRODUCTION OF FACTS

26. Plaintiff Eduardo Hernández, has been incarcerated in California's Pelican Bay State Prison's Security Housing Unit (PBSP/SHU) for 15 years in solitary confinement in a cramped, concrete, windowless cell for 22 and-half to 24 hours a day without any human contact or interaction (physical) with any other prisoner similarly housed (Regulations forbid and do not allow this). Defendants primary goal in working or supervising these SHU units, is to maintain prisoners health, safety and security, yet what has lead to this court action was the inten-

1 tional release of known segregated prisoners in
 2 different cells at the same time into the same area.
 3 27. Plaintiff sues on his own behalf alleging that
 4 he was subjected to the excessive use of force,
 5 prolonged exposure to mace, denial/interference
 6 of medical care/aid, retaliatory false charge to
 7 conceal abuse/confiscation of legal papers, denial
 8 of due process in subsequent proceeding and de-
 9 nial of follow-up medical care for injuries inflicted
 10 during the misuse of force in violation of the First,
 11 Eighth and Fourteenth Amendments to the Con-
 12 stitution and any others to come to light.

13 VI. FACTS

14 28. On June 9, 2011 at approx. 7:50 p.m. defendant D.
 15 Yang ("DB" SHU unit control booth; operator of all the cell
 16 doors electronically) opened the plaintiff's
 17 cell door without explanation.
 18

19 29. Plaintiff exited his cell to make his way towards
 20 the front section door where defendants J. Clemons,
 21 B. Newton and T. Osten were speaking up to
 22 defendant D. Yang who was knelt down
 23 looking and leaning downward from above
 24 in the control booth.

25 30. It is common practices for officials to re-
 26 lease prisoners into the section when free of
 27 any other person(s) to receive medication from
 28

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1 medical staff at the units section door.

2 31. It was Plaintiffs belief his cell door was
3 opened for his pending medication. As he made
4 his way towards defendants, with another prisoner
5 was released into the section at which time an
6 altercation ensued between Plaintiff and that
7 prisoner.

8 32. The altercation immediately ended as the
9 defendants J. Clemons, B. Newton and T. Oster
10 commenced to continuously spray Plaintiff with
11 excessive chemical agent.

12 33. Plaintiff immediately could not see or breath
13 and only attempted to hold onto anything at an
14 attempt to protect himself.

15 34. Defendant J. Clemons while continuously spraying
16 repeatedly shouted "...shoot'em shoot'em..." when
17 defendant D. Yang complied, shooting Plaintiff
18 with firearm (40mm launcher) striking him in
19 the right leg and right foot (It is Plaintiff's
20 belief that defendant J. Clemons fabricated
21 his report and it was used by defendants as
22 a templet to conceal that Plaintiff's injuries
23 i.e. broken foot **did** not result from staff).

24 35. Plaintiff immediately was knocked to the
25 floor by these painful impacts. The other prisoner
26 by this time had exited the section to the ex-
27 ercise yard which was closed there after. Bo-
28 oth he and Plaintiff being in separate secure

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1 areas and plaintiff on his stomach in prone position.

2 36. Plaintiff immediately requested for Medical staff's
3 assistance (First Aid) and/or assistance into the
4 shower (a few feet away within section) as he lay
5 bleeding unable to see, or stand in severe pain from
6 the burning mace.

7 37. Instead of allowing Medical Staff to provide First
8 aid and/or decontaminate plaintiff in the shower
9 defendants DOES, J. Clemons and T. Cabrera began to
10 shout out conflicting threats and/or instructions
11 to plaintiff.

12 38. Defendant J. Clemons repeatedly threatend to sp-
13 ray the plaintiff more if he "... did not get the
14 fuck-up and cuff-up..."

15 39. Defendant T. Cabrera at the same time shouted thre-
16 ats at plaintiff to "... stay down or you will be fucken
17 shot again..." repeatedly.

18 40. Plaintiff continued to repeatedly shout requesting
19 for assistance that he "... could not stand or see and
20 needed to be placed in the shower to wash off mace."

21 41. Plaintiff was ignored and forced to drag himself blindly
22 for approx. 20ft. to the section front door where he had to
23 pull himself up by the wall/door in order to stand at
24 which time defendants DOES and J. Clemons grabb-
25 ed and yanked his hands through the tray slot in the
26 door causing an immediate jolt of pain in his right
27 hands specifically to his thumb (re-injuring
28

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1 Plaintiff's thumb severely), Plaintiff shouted in extreme
 2 pain and defendant DOES and J. Clemons replied by
 3 yanking Plaintiff's hands through tray slot stating:
 4 "... cuff the fuck-up!" while slamming the cuffs on him
 5 behind his back.

6 42. Defendants then had the section door opened and
 7 opposed to allowing Medical provided first aid and/or
 8 placing Plaintiff in shower (a few feet away) they pro-
 9 ceeded to drag Plaintiff out of the unit up a corridor
 10 for approx. 150 yards, to corridor control. Plaintiff obvious-
 11 ly needed first aid and could not stand or walk (Defend-
 12 ants own reports describe him as having "...large amou-
 13 nts of blood coming from his face ..." therefore they were
 14 indifferent to his medical need) (Medical were Present).

15 43. As Plaintiff was being forcibly dragged he repeated re-
 16 quested to be placed in the shower and informed defend-
 17 ants that they were injuring him and that he could not
 18 stand or walk and needed medical assistance.

19 44. Defendant DOES, J. Clemons and B. Newton ignored
 20 Plaintiff's repeated pleas and continued to drag him up
 21 the corridor to a point in front of D-Facility corridor
 22 control where unknown officials were waiting (Plain-
 23 tiff was unable to see due to the painful mace) with other
 24 defendant DOES with defendant G. Pimentel who be-
 25 gan to give instructions and shouted repeated at
 26 those around for no-one "... to attend or wipe him
 27 off until he returned..." (with camera or for
 28 photographs)

complaint

1 referring to Plaintiff and injuries. Plaintiff immediat-
2 ely protested and repeated his request for decontamination
3 and medical assistance.

4 45. Defendant S. Nakamura replied to defendant G.
5 Pimentel's order saying: "... I need to stop the bleeding
6 and look for other injuries..." defendant G. Pimentel repeated
7 for no-one "... to attend or wipe him off!" As this took
8 place Plaintiff continued to request and plead for
9 help as he was now being forcibly put onto a wooden
10 flat board on his back on his hands. At this time
11 plaintiff informed defendants he would submit an appeal
12 for abuse. Defendants merely forced him down by the
13 chest and shoulders.

14 46. At this point it was approx. 8 p.m. when defendant
15 G. Pimentel left for camera. During this wait for defendant
16 G. Pimentel's return, Plaintiff continued to repeatedly
17 request defendant DOES, Nakamura, Lentz and Creed to
18 provide First Aid and to be properly washed off to be
19 decontaminated from the painful mace, that was now
20 causing him difficulty to breath. No-one replied to
21 plaintiffs' pleas for help nor did they attend to his
22 injuries to his leg and foot.

23 47. Plaintiff began to gag due to being force on his
24 back he was drowning in his own mucus and sweat
25 caused by the excessive mace. In an attempt to
26 stop choking Plaintiff struggled to sit-up gagging
27 and coughing, defendants immediately placed their
28 hands on him forcibly shoving him back down into

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1 and onto his hands smashing his left ring finger which
2 caused him extreme pain. Plaintiff continued to have
3 difficulty breathing, coughing up spit as he drowns
4 and choked on his mucus, again he attempted to
5 sit-up as he pleaded with defendants that they
6 broke his hand and without warning defendant s.
7 Nakamura put a rag over plaintiff's mouth and
8 nose as they again forcibly forced him back onto
9 his hands causing plaintiff extreme pain and panic
10 as they severely were hurting his now injured finger.

11 48. During this period Plaintiff was only able to hear and
12 heard defendants T. Woods and R. Tupy speaking to
13 defendant DOES (custody) who had been left to supervise
14 until defendant G. Pimentel's return.

15 49. Plaintiff called out to defendant T. Woods and R. Tupy
16 by name and requested that they order medical staff
17 defendants to provide First Aid and/or to have someone
18 decontaminate him from the painful mace.

19 50. Defendant T. Woods, R. Tupy and DOES did not re-
20 ply and merely stopped speaking clearly indicating
21 their indifference to Plaintiff's extreme distress and
22 need for Medical help.

23 51. Defendant R. Tupy later failed to report this ~~and/or~~ in
24 effort to conceal that Plaintiff's injuries (i.e. broken foot
25 , ring finger and thumb) did not result from staff. Also
26 neglecting to report plaintiff's allegations.

27 52. Plaintiff repeatedly told defendants that they will
28 be written-up and held liable, as he requested

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1 help stating they would be sued and fired.

2 53. One or more of defendants briefly laughed.

3 54. During this wait Plaintiff now knows this took place
4 in SHU "D" facility clinic.

5 55. Defendant G. Pimentel returned to clinic approx. 1 hr.
6 later to take photographs of plaintiff as Medical staff
7 defendants now begin assessment/care of his injuries
8 without attempting to take plaintiff to a shower to
9 be properly decontaminated from the painful burn-
10 ing mace.

11 56. Plaintiff was unable to open his eyes and
12 believes and is informed that the Medical staff
13 defendants had the responsibility to report any
14 of plaintiff's allegations of abuse and to follow
15 emergency response policies which they failed to do.

16 57. As Plaintiff is photographed he again requests to
17 be decontaminated and defendant Lentz or Creed
18 reply: that there is no time as they wheel plaintiff to
19 the Correctional Treatment Center (CTC) to be trans-
20 ported to hospital.

21 58. Once at the CTC an unknown medical staff told
22 Plaintiff there was no where to decontaminate him and
23 there would be no time as she attempted to relieve his
24 burning pain by squeezing a wet rag over him with-
25 out much relief effect at that point the ambul-
26 ance had arrived at approx. 9:30 p.m..

27 59. It is Plaintiff's belief that there was more than
28 enough time; during the approx. 1 hr. left unattend-
ed waiting for defendant G. Pimentel's return for

1 photographs prior to ambulances arrival to provide
2 First Aid and decontaminate plaintiff.

3 60. This indifference was in part to preserve crime
4 scene photos and there failure to report events
5 and/or fabricate them as some other way, is a
6 clear intentional attempt to conceal these constit-
7 utional violations.

8 61. As Plaintiff was placed into the ambulance
9 (approx. 1 hr. and a half after the altercation)
10 during the transport to the hospital the Paramedic
11 and custody were ~~both~~ effected by the fumes of
12 excess mace on Plaintiff.

13 62. Plaintiff asked paramedic for some type of re-
14 lief from the burning mace. Paramedic attempted
15 to have him open his eyes indicating that the
16 ambulance had no equipment to wash him off
17 and offered Plaintiff morphin to relieve the
18 pain. Paramedic gave him two separate 5mg.s
19 each shots of morphin which failed to ease the
20 burning pain.

21 63. Once Plaintiff arrived at the emergency room
22 at Sutter Coast Hospital the attending nurse
23 seen his distress and gave him a pain relief
24 pill which failed to work for the burning. She
25 indicated there was no where to decontaminate
26 plaintiff from the mace.

27 64. The nurse later brought some yogurt to apply
28

complaint

on plaintiff's most visible effected areas of burning to attempt to relieve his pain.

65. The nurse then asked custody to wheel the Plaintiff to the ambulance dock where a nosol was above 20 ft. high and an attempt was made to wash Plaintiff off.

66. As Plaintiff sat naked in changes under the nosol the water only fell in a mist making the burning worse as it only re-activated the dry mace. Plaintiff was now returned to emergency room to be treated, still unable to open his eyes.

67. Plaintiff was assessed and treated with and for the following injuries:

- (a) Right Foot 2nd tarsal fracture;
 - (b) Contusion right foot;
 - (c) Laceration right midcalf anteriorly, abrasion right midcalf, contusion right midcalf;
 - (d) Dislocation of the left 4th DIP joint;
 - (e) Fracture of the right proximal phalanx of the thumb;
 - (f) Multiple lacerations to the head;
 - (g) Multiple abrasions to the scalp;
 - (h) Multiple abrasions to the back;
 - (i) sub-cm abrasion to the left upper extremity;
 - (j) Chemical conjunctivitis secondary to pepper spray.
- (SEE EXHIBIT A: EMERGENCY ROOM RECORD / REPORT ATTN: PG: 3 & 4)
(10 PAGES TOTAL).

68. On June 10, 2011 Plaintiff was transported back

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1 to the Prison and arrived at approx. 3 A.M. admitted
2 to the CTC, still in full change restraints approx. 7 hrs.
3 69. Plaintiff informed CTC custody and Medical
4 staff that he needed to be properly decontaminated
5 from the mace.

6 70. Medical Staff Escobar indicated that was a
7 custody issue.

8 71. Plaintiff then spoke to custody officer Brunner
9 who stated "...it was up to the Sgt.".

10 72. Plaintiff directly asked defendant Butcher
11 who was CTC First watch Sgt. as Plaintiff
12 was being placed into CTC cell.

13 73. Defendant Butcher told Plaintiff to "...wash
14 off in the sink..." and left.

15 74. Plaintiff was in no way able to self-decontaminate
16 in his sink with the multiple splits and sutures
17 in his hand. He had a splint on left ring
18 finger, sutures in the palm of same hand,
19 splint on right thumb and a posterior short
20 -leg splint on his right leg/foot. Obviously
21 needing medical to assist for decontamination.

22 75. Plaintiff was unable to sleep and continued to
23 request for CTC officials names for complaint
24 purposes.

25 76. Defendant Butcher as CTC Sgt. failed to allow
26 Plaintiff to properly decontaminate from the dried
27 on mace off him, which continued to cause him
28

COMPLAINT

1 severe pain as it re-activated with his move-
2 ments.

3 77. At approx. 6:30 A.M. Plaintiff contacted Second
4 Watch Custody and Medical staff to request for
5 the opportunity and assistance to properly be
6 decontaminated in a shower from the mace.

7 78. Defendant Presler as C.T.C Sgt. told Plaintiff
8 "...You already have been decontaminated...
9 and all new arrivals at CTC get routine showers
10 after 3 days..." indicating Plaintiff would not
11 be allowed assistance for and to decontaminate
12 in a shower.

13 79. Plaintiff then pursuant procedure made the
14 same request via an informal grievance request
15 and re-addressed defendant Presler, C.O. Kelley
16 accepted this request and later returned it at
17 approx. 8 A.M. indicating that defendant Presler
18 instruct him to reply to the request as follows:

19 "... You will be afforded the opportunity to shower
20 today (6.10.11) Third Watch." clearly refusing to
21 shower Plaintiff.
22

23 80. At approx. 9 p.m. Plaintiff was contacted by
24 physician and other medical staff to conduct an
25 admission evaluation accompanied by custody
26 and defendant Presler taking place in plaintiff's
27 cell.

28 81. During this evaluation Plaintiff informed the

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1 physician and R.N. that he needed to be properly decontaminated from the dried on mace, that continued to
2 cause him painful discomfort.
3

4 82. Defendant Presler immediately interfeared by interrupted
5 stating "...he was already decontaminated and was told
6 he would get a shower..." ending the evaluation closing
7 the cell door, to then remove plaintiff's restraints.

8 83. At approx. 3 p.m. (20 hrs after being maced) Plaintiff
9 was allowed to decontaminate in the CTC shower.

10 84. Plaintiff had to remain at the CTC for approx. 5 days
11 and was unnecessarily made to be restrained every
12 time Medical needed to provide daily treatments*
13 (up to 3 times) to his numerous injuries causing him
14 pain as he was made to cuff-up prior to opening.

15 85. During this C.T.C. Stay Plaintiff was approached at
16 his cell door (176) by defendant Nakamura who
17 was asking about plaintiff's injuries at approx. 12
18 noon on June 12, 2011.

19 86. Plaintiff inquired of defendant Nakamura what
20 were his reasons for not providing plaintiff immediate
21 first aid or why he allowed defendant Pimentel
22 to interfere during the 6.9.11 Medical response after
23 the altercation and whether if he reported defendant's
24 actions/interference with Medical staff or the
25 abuse allegations.

26 87. Defendant Nakamura stated to Plaintiff for him
27 "...not to worry about it..." he then returned to
28 the C.T.C. office directly in front of Plaintiff's

COMPLAINT

view and cell (176) where defendant began to speak to another unknown medical staff about re-writing his report on plaintiffs' incident of June 9, 2011

88. Defendant S. Nakamura and medical staff then began to work on the computer for about or approx. 30 minutes. it was clear this other staff member was assisting in re-writing a report for the defendant.

89. It is Plaintiffs' belief that defendant Nakamura has conspired to conceal the constitutional violations herein described.

90. On June 14, 2011 at approx. 2 p.m. Plaintiff was released from the CTC to return to SHU housing.

91. Defendant J. Clemons and unknown custody had the duty to transport Plaintiff to SHU housing.

92. During this transport defendant J. Clemons made the following statements to plaintiff "...man that shit really fucked you up... it was crazy that guy stomped on your foot at the same time you where shot..." and was laughing referring to plaintiffs' broken foot suggesting it was not a result of being shot (staff).

93. It is Plaintiffs' belief and informed that defendant DOES, M. Creed, Lentz, Nakamura, J. Clemons, G. Pimentel, T. Woods, R. Tupy, T. Cabrera and B. Newton all conspired to conceal

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the constitutional violations against plaintiff. They had a duty and responsibility to interview, and report to or on the allegations during the abuse and after complying with the use of Force and Reporting Policies and procedures, including both the application of the Force and subsequent reporting and documentation requirements to a use of firearm, causing great bodily injury (GBI).

94. Plaintiff made several written requests to have the top of his right foot photographed to document the clear inprint of a 40mm impact round that caused his broken foot (GBI). Due to defendant J. Clemons comment (SEE: PARAGRAPH 92 ABOVE).

95. These requests mostly went unanswered no photo was taken there after of this injury. In fact during an appeal interview with video interviewer refused to video Plaintiff's foot.

96. On June 23, 2011 Plaintiff filed an administrative appeal/complaint pointing out the alleged physical abuse, Excessive Use of Force and Indifference relevant to the above events.

97. Defendants G.D. Lewis and M. McLean denied this appeal/complaint.

98. Plaintiff was denied Medical care for subsequent care/treatment on injuries specifically to his foot and left ring finger, which is permanently damaged.

99. Since then, the plaintiff has submitted repeated requests and has filed an appeal on 8.7.2011.

100. Defendant M. McLean is responsible for providing specialized medical care and review appeals i.e. physical therapy.

Complaint

1 101. Defendant M. McLean denied Plaintiffs' appeal/com-
2 plaint.

3 102. On 6-17-11 Plaintiff was served with a disciplinary
4 charge of attempted murder for the altercation (SEE
5 PARAGRAPHS 5-7 ABOVE).

6 103. Plaintiff postponed the hearing pending the resolu-
7 tion of criminal prosecution.

8 104. On 9-8-11 Plaintiff was informed the criminal prosec-
9 ution was declined and that his disciplinary hear-
ing could proceed as he was offered his procedural
rights.

10 105. Plaintiff requested to be assigned; staff Assistant (S.A.)
11 and an Investigative Employee (I.E.) in order to locate
12 and obtain documents, witnesses and statements.

13 106. Disciplinary Officer K. Welch stated that an I.E. wo-
14 uld be forth-coming, but a S.A. would not be assigned
15 and Plaintiff could provide I.E. with a complete
list of witnesses.

16 107. On 9-15-11 Plaintiff was taken before defendant Vand-
17 erhooven for the disciplinary hearing under protest.

18 108. Plaintiff informed defendant that he was not prepa-
19 red nor had he seen by I.E. who he needed to obtain the
20 listed documents on a request Plaintiff presented to
21 the defendant, who in turn merely said that Plaintiff
22 wouldn't be assigned an I.E. and that he would re-
ply indicating those documents are irrelevant.

23 109. Plaintiff continued to protest and repeated his
24 need to prepare with an I.E. and witnesses.

25 110. Defendant merely proceeded with hearing ignoring
26 Plaintiffs' protests.

27 111. Plaintiff made the following protests for the he-
28 aring; Pointing out how could hearing officers reply on

complaint

1 staff reports when they are obviously fabricated to
2 conceal that plaintiffs injuries resulted from staff,
3 and that defendant J. Clemons report was used as
4 a templet for other conspiring officials to use.

5 112. Plaintiff further pointed out that reports indicate
6 that defendant J. Clemons is the primary reporter who
7 describes events/incident from prior the altercation
8 and on... this is impossible when defendants own
9 supplemental report indicates that he "...responded
10 to an audible alarm in D6..." and "...observed an
11 altercation once there.

12 113. Defendant F. Vanderhoofven merely stated "...they
13 just didn't do a good job on the reports..." and "...
14 he had to find you guilty..." ending the hearing.

15 114. On 10-18-11 Plaintiff received the final copy of the hearing
16 report which indicated a guilty of attempted murder
17 based on staff reports.

18 115. Plaintiff was given a disposition of 360 day credit
19 loss and referred to classification for SHU assessment
20 (confinement)... Plaintiff was later assessed and sent-
21 enced to a 3 year SHU term ending 4-4-2014.

22 116. Defendant F. Vanderhoofven failed to document or
23 considered Plaintiffs protests and argument during
24 hearing.

25 117. Defendant F. Vanderhoofven's conclusion is not support-
26 ed by reports which fail to state if plaintiff ever had a
27 weapon in his hands at any time during the altercation.
28

complaint

118. Defendant Vanderhoofven reasoning for the denial for Plaintiffs request for witnesses, documents and I.E. is false, contradictory and/or makes no science.

119. Finally the staff reports fail to state any facts showing that the Plaintiff was attempting to murder anyone.

120. On 10-20-2011 pursuant to prison procedure; Plaintiff filed an administrative appeal for denial of Due process pointing out that I.E., witnesses and evidence was denied and most importantly that the charge was not supported by evidence.

121. Defendant G.D. Lewis denied Plaintiffs appeal.

122. On 7-7-2011 Plaintiff wrote the Office of internal Affairs (OIA) relevant to the 6-9-2011 incident.

123. On 6-29-2012 Defendant Reich removed several legal papers relevant to this cases preparation and she confiscated them targeting the following case law and policies: (i) William v. Benjamin, 77 F.3d 765 (4th Cir. 1996); (ii) Clement v. Gomez, 298 F.3d 898 (C.A. 9 Cal. 2002); (iii) Robinson v. Prunty, 249 F.3d (9th Cir. 2001); (iv) PBSP- Use of Force Policy; (v) D.O.M.- Use of Force Procedure; (vi) D.O.M.- Incident Report Procedure. This case law and policies seemed to be defendants focus, the Court should note this material all relevant to the preparation relevant to plaintiffs case which he obtained through outside resources they did not belong

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1 to (nor were pending over-due) the Law Library and were
 2 never returned (Reason for cell search was a fabrication).
 3 124. Plaintiff believes this confiscation of these specific legal
 4 papers is in direct result and in retaliation to the numerous
 5 complaints and appeals during and after the June 9, 2011
 6 incident and preparation of suit.

7 125. Plaintiff contacted the OIA by letter on July 1st, 2012 to
 8 inquire if PBSP reported the 6-9-2011 incident and status
 9 of investigation, and/or his July 7, 2011 letter... Plaintiff
 10 also informed OIA in the July 1st, 2012 letter about latest
 11 confiscation of legal papers.
 12

13 126. On 7-18-2012 pursuant to prison procedure; Plaintiff filed
 14 an administrative appeal/complaint pointing out the ret-
 15 aliation and confiscation of legal papers.

16 127. On or about 8-10-2012 Plaintiff was issued a CDC-128-B
 17 chrono authored by defendant G.W. Olson, giving him
 18 notice against contacting OIA and plaintiff's July
 19 1, 2012 letter was attached and opened. To this day
 20 the OIA has failed to reply to plaintiff's letters
 21 of July 7, 2011 and of July 1st, 2012.
 22

23 128. Defendant G.W. Olson denied Plaintiff's July 7, 2012
 24 retaliation administrative appeal/complaint.

25 VII. EXHAUSTION OF ADMINISTRATIVE 26 REMEDIES

27 129. The plaintiff has exhausted his administrative
 28

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remedies with respect to all claims and all defendants.

VIII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

130. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-129.

131. Defendants use of physical force against the plaintiff without need or provocation or failure to allow him to wash off mace prolonging his pain and suffering for approx. 20 hrs and not allowing medical staff attend his serious injuries or failure to intervene to prevent the prolonged and/or misuse of force, were done maliciously and sadistically and constituted crule and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. The use of physical force against plaintiff in restraints with the prolonged exposure of mace without need or provocation constituted the tort of assault and battery under the law of California.

SECOND CAUSE OF ACTION

132. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-129.

133. Defendants failure to provide plaintiff medical first aid or failure to intervene to provide first aid to stop his unnecessary and prolonged pain and suffering and failure to provide follow-up treatment for his

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injuries constitutes deliberate indifference to the plaintiffs' serious medical needs in violation of the U.S. Constitution. These actions constitutes the tort of negligence under the law of California.

THIRD CAUSE OF ACTION

134. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-129.

135. Defendants failure to follow Security Housing Unit yard release procedure; failure to curb the known pattern of releasing known segregated rival prisoners into common areas at the same time, constitutes deliberate indifference to plaintiffs' and other prisoners' health and safety and contributed to and proximately caused the above-described violation of Eighth Amendment rights of the U.S. Constitution.

FOURTH CAUSE OF ACTION

136. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-129.

137. Defendants intentional confiscation of plaintiffs' legal papers and their intentional omission or fabrication of reports or charges, in order to conceal the true facts of events, constituted retaliation and interference with the right of access to courts in violation of the First Amendment of the U.S. Constitution. These actions did not advance

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any legitimate penological goals or interest.

FIFTH CAUSE OF ACTION

138. Plaintiff realleges and incorporates by reference each paragraphs 1-129.

139. Each defendant, or some among them, did conspire and agree to deprive plaintiff of his constitutional rights as alleged herein, in violation of 42 U.S.C. section 1983 and 1985.

SIXTH CAUSE OF ACTION

140. Plaintiff realleges and incorporates by reference each allegation of paragraphs 1-129.

141. Defendants lack of impartiality during plaintiffs disciplinary hearing; Failure to provide him staff assistance or Investigative employee; Failure to allow him prepare for hearing; Failure to marshal facts with possible witnesses; Failure to give him a right to be heard; Failure to consider or document his complete defense and points; Failure to provide a non-contradictory, ambiguous, and inadequate disposition of charge; and knowingly upholding a false charge or decision deprives plaintiff of his state created liberty interest in violation of the Fourteenth Amendment of the U.S. Constitution.

SEVENTH CAUSE OF ACTION

142. Plaintiff realleges and incorporates by refere-

COMPLAINT

1 nce each allegation of paragraphs 1-129.

2 143. Defendants have retained and imposed a 3
3 year SHU term segregation upon plaintiff on
4 the basis of fabricated, omitted, unreliable
5 and untrue staff reports; Failure to give him
6 an opportunity to properly present his views to
7 an impartial fact finder; and Failure to pro-
8 vide him staff assistance or an Investigative
9 employee in order to marshal the facts in his de-
10 fense while segregated, constitutes a significant
11 and atypical hardship, in violation of the Due
12 Process Clause of the Fourteenth Amendment
13 of the U.S. Constitution.

14 EIGHTH CAUSE OF ACTION

15 143. Plaintiff realleges and incorporates by reference each
16 allegation of paragraphs 1-129.

17 144. The extension and retention of plaintiff in SHU se-
18 gregation on the basis of unfair hearing and false
19 charges violates Article I sections 7 and 15 of the
20 California Constitution in that the segregation vio-
21 lates the Due Process of law.

22 NINETH CAUSE OF ACTION

23 145. Plaintiff realleges and incorporates by reference each
24 allegation of paragraphs 1-129.

25 146. The 3 year sentence and retention of plaintiff in
26 SHU segregation based on false charges and unfair
27 hearing violates California Penal Code section 2932,
28

COMPLAINT

1 which imposes a mandatory duty upon defendants, and
 2 each of them, to afford due process protection to prisoners.
 3 Wherefore defendants are liable pursuant to California
 4 law.

5 147. Furthermore California Penal Code sections 147 and
 6 673 imposes a mandatory duty upon defendants;
 7 and each of them, to treat fairly and humanely and
 8 to protect plaintiffs physical and mental well-being.

9 TENTH CAUSE OF ACTION

10 148. Plaintiff realleges and incorporates by reference each
 11 allegation of paragraphs 1-129.

12 149. Supervisory defendants have a duty to establish
 13 policies and procedures for the administration of
 14 Pelican Bay State Prison. Supervisory defendants
 15 have a duty to train and supervise subordinate employees.

16 150. The system of policies and procedures were violated and/or
 17 used to violate plaintiffs' rights as described in the pre-
 18 ceding causes of action.

19 151. Supervisory defendants were deliberately indifferent
 20 to the violations of plaintiffs' rights described herein.

21 152. Supervisory defendants breached their duties to
 22 legally administer the prison, and to train and super-
 23 vise subordinates where plaintiffs' rights were violated
 24 as a result of defendants acting in violation of defen-
 25 dants' policies and practices, to the extent supervisory
 26 defendants had actual and constructive knowledge of
 27 the violations and did nothing to prevent or correct them.

28 COMPLAINT

IX. CAUSATION

As a direct and proximate result of the aforementioned acts and omissions on the part of defendants, plaintiff has suffered serious physical harm, permanent harm and continues to suffer general and special damages in an amount to be proven at trial. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of defendants unless the court grants the declaratory and injunctive relief which plaintiff seeks.

X. PRAY FOR RELIEF

WHEREFORE, plaintiff respectfully prays for the following relief:

1) A declaratory judgment that the defendants' acts and practices described herein violated plaintiffs' rights as herein stated.

2) A preliminary and permanent injunction which prohibits and requires that defendants, employees and/or successors: (i) immediately arrange for the plaintiffs' examination by an outside physician to evaluate his left ring finger and right leg and foot; (ii) immediately arrange for the plaintiffs' need for any corrective physical therapy or other follow-up medical treatment(s) to be evaluated by an or the outside medical practitioner with expertise in

COMPLAINT

1 treatment and restoration of these types of
 2 injuries if needed; (iii) carry out without delay the
 3 treatment directed by such outside medical prac-
 4 titioner; (iv) cease the enforcement or practice of
 5 not allowing immediate on scene medical aid to
 6 prisoners; (v) cease the enforcement or practice of
 7 not allowing decontamination of maced prisoners
 8 immediately following the restoration of order;
 9 (vi) cease the practice of giving priority to pre-
 10 serving crime scene photos over medical aid
 11 and decontamination; (vii) cease the enforce-
 12 ment or practice of not following reporting re-
 13 quirement policies and procedures i.e. Medical
 14 Evaluation(s), Application of Force, Chemical Agents,
 15 Decontamination from Chemical Agents, Involved
 16 Staff..., Health Care Staff Use of Force..., Incident
 17 Commander..., Reporting Allegations of Unnecessary or
 18 Excessive Force, Allegations of Excessive or Unnecessary
 19 Force - Incident Commander and Appeals Coordinator
 20 ...; (viii) give the plaintiff the opportunity to be
 21 heard; (ix) give the plaintiff the staff assistance
 22 and/or Investigative Employee in order to mar-
 23 tial the facts, present, and/or interview possible
 24 witnesses; (x) expunge plaintiff's file of any re-
 25 ference of this false charge herein stated and/or
 26 (xi) give the plaintiff a corrective subsequent
 27 hearing on those false charges with procedure
 28

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1 rights in order and (xii) cease harassment, retaliation
2 and reprisals for plaintiffs' court litigation and
3 /or use of internal grievances with the return of
4 the confiscated legal papers defendant Riech
5 removed from plaintiffs' cell.

6 3) Award compensatory damages in the following
7 amounts:

8 (a) \$100,000 jointly and severally for plaintiffs' physical
9 and emotional injuries during defendants' excessive
10 use of force;

11 (b) \$100,000 jointly and severally for plaintiffs'
12 prolonged and emotional suffering and injuries
13 resulting from their failure to provide Medical
14 First aid to or decontamination of and adequate
15 Medical care to the plaintiff;

16 (c) \$50,000 jointly and severally for the punishment,
17 including deprivation of liberty and amenity, and
18 emotional injury resulting from their denial of
19 due process in connection with the plaintiffs'
20 disciplinary proceeding; and

21 (d) \$30,000 jointly and severally for the retaliatory
22 false charges and confiscation of legal papers
23 connected to these proceedings or preparation
24 of.

25 4) Award punitive damages from any defendant
26 found to have intentionally denied plaintiffs'

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rights in the amount of \$25,000 each.

5) Plaintiffs' cost of and filing suit.

6) For the costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1983 and any other grounds authorized by law.

7) For the appointment of attorney.

8) Trial by jury, including, to the extent that legitimate security concerns dictate, in judicial proceedings regarding the specific factual grounds that purportedly justify plaintiff's incarceration and SHU term.

9) For Further relief the court deems just.

Respectfully Submitted,



Eduardo A. Hernández #J37244
Pelican Bay State Prison
P.O. Box 7500, D10/121
Crescent City, CA. 95532

Date: _____

Pursuant to 28 U.S.C. §1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on

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